

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: GRIGSBY AND ASSOCIATES, INC. AND
CALVIN GRIGSBY

)
)
) File No. 1100227
)
)

Notice of Hearing

TO THE RESPONDENTS: Mr. Calvin Grigsby, CRD No. 1123572
President
Grigsby and Associates, Inc., CRD No. 13364
311 California St, Suite 320
San Francisco CA 94104

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953, [815 ILCS 5/1 et seq.] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 300 W. Jefferson St., Suite 300A, Springfield, Illinois 62702, on the 17th day of October 2012 at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before Jon K. Ellis, or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order should be entered against Grigsby and Associates, Inc. and Calvin Grigsby which suspends or revokes their dealer and salesperson registrations respectively, prohibits them from offering or selling securities in the State of Illinois and granting such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount pursuant to Section 11 of the Act, payable within ten (10) days of the entry of the Order.

The Grounds for such action is as follows:

1. Grigsby and Associates is a registered Dealer in Illinois from April 13, 2007 to the present and according to its web site is a "full-service investment

Notice of Hearing

-2-

banking firm providing financial advisory and investment banking services to state and local governments and corporations."

2. In the State of Illinois, this included financial services related to bond offerings, fund management and investment of assets by State of Illinois agencies and municipalities including the Illinois Student Assistance Commission (ISAC).
3. As a dealer registered in the State of Illinois, Grigsby and Associates is obligated under the Illinois Securities Act and the Rules and Regulations of the Financial Industry Regulatory Authority (FINRA) and Municipal Securities Rulemaking Board (MSRB) to supervise its employees, independent contractors and registered representatives in order to ensure compliance with applicable Federal, State, and Self Regulatory Organization laws, rules and regulations.
4. Such duties include the requirement to create, maintain and enforce written supervisory procedures in order to ensure compliance with applicable securities laws, rules and regulations and to create and test internal controls to ensure the efficacy of the written supervisory procedures.
5. One such duty is the appointment of a Chief Compliance Officer for the firm who is responsible for monitoring and ensuring compliance with applicable securities laws, rules and regulations by the firm and its employees, independent contractors and registered representatives.
6. Calvin Grigsby is currently the Chief Compliance Officer for Grigsby and Associates and who was so designated at all times relevant. He is also currently registered in the State of Illinois as a securities salesperson.
7. Additionally, Grigsby and Associates was required to maintain certain books and records evidencing its compliance with applicable securities laws, rules and regulations.

Failure to Supervise Research and Preparation of Offering Analyses

Notice of Hearing

-3-

8. Alvin Joseph Boutte, Jr. ("Boutte") was employed by Grigsby and Associates from February 6, 2007 to September 21, 2011.
9. Until September 21, 2011, Boutte was located in the Chicago Office of Grigsby and Associates as its Managing Director.
10. Calvin Grigsby was the immediate supervisor for Boutte during the relevant time period.
11. Sometime in October 2007, Grigsby and Associates through Boutte began preparing an Offering Analysis regarding an investment by ISAC to purchase restricted stock in ShoreBank Corporation (SBC), the bank holding company for ShoreBank.
12. At all times relevant, SBC was not a publically traded company on any exchange but rather was a privately held corporation. Its securities were not registered with the Illinois Securities Department nor the Securities and Exchange Commission and relied upon exemptions from registration provided by State and Federal Securities laws. These exemptions restricted the manner and type of sales of SBC securities and therefore reduced their liquidity.
13. As a prepaid tuition program, College Illinois! invests and manages an investment fund of about \$1.35 billion used to pay tuition for students who are the beneficiaries of prepaid tuition contracts through the Illinois Prepaid Tuition Trust Fund (the "College Illinois! Fund").
14. Most of the assets of the College Illinois! Fund are invested and managed by third party outside investment advisers who contract with ISAC to provided financial services as investment advisers and fund managers.
15. Grigsby and Associates through Boutte completed its first version of an Offering Analysis relating to an investment in SBC dated January 3, 2008. The January 3, 2008 Offering Analysis stated as follows:

"This analysis was prepared by Grigsby & Associates inc. ("Grigsby") at the request of Illinois Student Assistance Commission as part of its assessment of an investment in The ShoreBank Corporation ("ShoreBank" or "Company"). Our objective is to highlight the value

Notice of Hearing

-4-

and risks of participating in the ShoreBank Corporation Offering referenced herein, and commenting on the appropriateness of the pricing of that investment."

16. During the time period Grigsby and Associates was preparing the January 3, 2008 Offering Analysis, Grigsby and Associates did not have any written contract with ISAC.
17. Approximately January 4, 2008, ISAC issued a Request for Proposals (RFP) relating to the offering of financial services regarding the underwriting of bonds to be issued by ISAC and for interest rate exchange agreements. Ten financial services firms, including Grigsby and Associates submitted to ISAC proposals pursuant to the January 4, 2008 RFP.
18. Grigsby and Associates response to the January 4, 2008 RFP was primarily prepared by Alvin Boutte and another employee of Grigsby and Associates, Jerry Liang, Vice President of the firm.
19. The January 4, 2008 RFP response of Grigsby and Associates was submitted with the knowledge and approval of Calvin Grigsby, President and Chief Compliance Officer of Grigsby and Associates.
20. The proposal of Grigsby and Associates was the sole proposal that included an unsolicited provision stating that the firm would also provide: "Financial Advisor, investment banking and analysis services related to investment of 529 prepaid tuition plan assets in illiquid assets and/or private placement in new asset categories charges: 1.25 to 2% of invested assets."
21. After submitting the Grigsby and Associates' proposal to the January 4, 2008 RFP, Boutte continued working with SBC and ISAC in order for ISAC to invest in SBC.
22. Because the January 3, 2008 Offering Analysis was already out of date, Grigsby and Associates through Boutte began revising this report. The first revised report was dated June 6, 2008 and was submitted to ISAC approximately June 24, 2008. Except for changes to include updated financial statements provided by SBC and the inclusion of various media articles, the June 6, 2008 report was virtually identical to the January 3, 2008 report.

Notice of Hearing

-5-

23. On August 6, 2008, the ISAC board approved an investment in two installments in SBC subject to the conditions of a term sheet for the investment which included a completion of a legal review and prudence opinion. The first investment of \$12,712,500 was funded and completed on September 30, 2008.
24. After the ISAC commissioners approved the investment, Boutte wrote in email from his Grigsby and Associates email account to one of the commissioners regarding the SBC investment stating: "It's a great deal for ISAC and has a lot of upside."
25. Approximately September 11, 2008, Grigsby and Associates delivered a third SBC Offering Analysis dated September 9, 2008. Similar to the second version, it was virtually identical to the previous versions with only updated financial information.
26. Portions of the financial analysis sections of all three versions of the Offering Analysis were prepared by a third person, Paul Dubuque, contracted by Grigsby and Associates. Dubuque through his firm, Crudem Capital, was paid \$50,000 from the fee paid by ISAC to Grigsby and Associates but was not disclosed as a subcontractor to ISAC as required by the contract and by State law.
27. All three versions of the above Offering Analyses were prepared by Boutte while employed by Grigsby and Associates and further state they are the work product of Grigsby and Associates.
28. These Offering Analyses were communications with the public and required to be reviewed and receive prior approval by Calving Grigsby or another principal of Grigsby and Associates prior to their submission to ISAC.
29. There is no documented review or prior approval of these offering analyses by a principal of Grigsby and Associates.
30. After approval of the investment by the ISAC commissioners, several significant events took place that should have resulted in Grigsby and Associates advising ISAC not to invest in SBC as follows:

Notice of Hearing

-6-

- a. Approximately, August 28, 2008, ShoreBank executives informed Boutte that ShoreBank had missed its financial performance projections. Boutte failed to advise ISAC of the significance of this financial setback by ShoreBank but rather stated it was: "No big deal" and that the bank could "weather any storm."
- b. In all three versions of his Offering Analysis, Grigsby and Associates and Boutte stated and provided statistics regarding bank failures in the United States writing that only 3 banks had failed in the last 3 year period of 2005-2007; and
- c. By September 8, 2008, the date of the last Offering Analysis, 10 banks in the U.S. had failed and by September 30, 2008, the date of the ISAC investment in SBC, 13 banks had failed.

Failure to Supervise Issuance of Prudence Opinions

31. At the request of ISAC, Grigsby and Associates through Boutte submitted two prudence opinion letters both dated September 11, 2011. The first was delivered on September 11, 2008 and the second was delivered on September 26, 2008.
32. Both Prudence opinions were submitted on Grigsby and Associates letterhead to ISAC.
33. Despite these warning signs, Boutte in his second prudence opinion letter dated September 11, 2008 and delivered September 26, 2008 stated as follows:

"We have now concluded our 9 month due diligence process as your advisors on the proposed investment in Shorebank Corporation by the Illinois Student Assistance Commission on behalf of its' Pre-paid College Trust Fund.

Based on the information we gained during this extensive process and our understanding of the investment objectives of your fund it is the

Notice of Hearing

-7-

Opinion of Grigsby & Associates that this investment as proposed is a prudent investment for ISAC's Pre-paid College Trust Fund. We recommend it without qualification."

34. In August of 2010, ShoreBank was closed by the FDIC, wiping out the complete \$12,712,500 investment by ISAC.

Failure to Conduct Adequate Due Diligence

35. The Illinois Securities Department conducted an audit of the Chicago Office of Grigsby and Associates commenced on June 28, 2011.
36. Boutte in his Offering Analyses and Prudence Opinions stated that he had conducted on site branch office inspections, detailed interviews of key personnel of SBC and other due diligence investigations.
37. The Department's audit revealed that no due diligence file was maintained for any of the work conducted by Grigsby and Associates for the work prepared on behalf of ISAC regarding the SBC investment.
38. Furthermore, no records of any interviews, branch office visits, check-lists or any other documentation made or kept by Boutte and/or Grigsby and Associates was discovered by the Department Auditors.
39. Also, no records, drafts or any other work product for Paul Dubuque and/or Crudem Captial were maintained in the files examined by the Department Auditors.
40. After the closing of the SBC investment on September 30, 2008, Grigsby and Associates through Boutte submitted an invoice for Grigsby and Associates' work on the Offering Analysis. The invoice was not itemized and did not provide any accounting of time nor services rendered in preparation by Boutte or any other person of Grigsby and Associates of the Offering Analysis. Rather, the amount requested and received was a contingent fee and referenced the investment

Notice of Hearing

-8-

amount of \$12,780,000 and a formula of 2% of the invested amount resulting in a final fee of \$255,600. ISAC paid Grigsby and Associates this total fee amount sometime in December of 2008.

41. At all times relevant, Boutte communicated with ISAC staff using a Grigsby and Associates email account and using Grigsby and Associates letterhead.

**Breach of Fiduciary Duty, Unsuitable
Recommendation, Misrepresentations and Omissions**

42. As an investment adviser to the Illinois Student Assistance Commission, Grigsby and Associates and Boutte had a fiduciary duty to ISAC, the College Illinois! Fund and to the purchasers of Prepaid tuition contracts to provide investment advice and recommendations that were in the best interests of their clients, ISAC and the College Illinois! Fund.
43. The recommendations and investment advice to the Illinois Student Assistance Commission regarding the proposed investment in ShoreBank Corporation were unsuitable and in violation of Rules 130.850 and 130.853 of the Rules and Regulations Under the Illinois Securities Law of 1953, 14 Admin Code 130.100 et seq.
44. Grigsby and Associates breached their fiduciary duty to ISAC and the College Illinois! Fund by:
 - a. Failing to prepare a complete and accurate Offering Analysis that fairly and objectively analyzed the rewards and risks of the SBC offering;
 - b. Entering into a contingent fee arrangement for due diligence and financial advisory services that was based upon the amount invested and would result in Grigsby and Associates receiving payment only if the investment that Grigsby and Associate was analyzing and advising upon was made by ISAC and the College Illinois! Fund, its clients;
 - c. Recommending to ISAC to invest in an unsuitable, not in the best interests of ISAC,

Notice of Hearing

-9-

the College Illinois! Fund and the purchasers of prepaid investment contracts, investment in SBC despite evidence that the SBC investment was not a prudent investment for the College Illinois! Fund.

45. Grigsby and Associates also made material misrepresentations and omissions as follows:
 - a. Misrepresenting and omitting material information about the safety and soundness of investing in SBC;
 - b. Failing to disclose to ISAC that a subcontractor performed substantial amount of the work under Grigsby and Associates' contract and was paid or would be paid \$50,000.
46. On January 6, 2012, the Illinois Securities Department entered a Consent Order against Boutte finding that he had violated the Illinois Securities Act in his preparation of the Offering Analyses, Prudence Opinions and other work relating to the SBC investment by ISAC.

Failure to Conduct Internal Audits

47. Pursuant to State and FINRA laws, rules and regulations, Grigsby and Associates is required to conduct internal audits of its branch offices, including the Chicago office.
48. No internal audits had been completed by Grigsby and Associates and/or Calvin Grigsby of the Chicago Office as required by State and FINRA requirements.
49. Department Auditors were advised that no internal audits were conducted of the Chicago office by Grigsby and Associates but rather they received, on an ad hoc basis, verbal reviews and commentaries regarding the operations of the Branch Office.

Failure to Maintain and Review Emails

Notice of Hearing

-10-

50. Pursuant to SEC, FINRA rules and regulations and Section 8 of the Illinois Securities Act, every Dealer is required to keep and maintain communications and correspondence with customers and the public, including emails.
51. Emails of the Chicago office were not properly archived and maintained as required by applicable securities laws, rules and regulations by Grigsby and Associates resulting in several months of missing emails for the Chicago office and for all of Grigsby and Associates offices during the year 2007.
52. No email review was made by Calvin Grigsby or anyone else in Grigsby and Associates as required by State and FINRA requirements.

Violations relating to a Third Party Contractor

53. Pursuant to the Illinois Procurement Code and the ISAC contract with Grigsby and Associates, Grigsby and Associates was required to disclose all sub contractors and the amount paid to each sub contractor.
54. \$50,000 of the fees earned by Grigsby and Associates for work on the ISAC transaction were split with a Paul Dubuque and his firm Crudem Capital.
55. Grigsby and Associates failed to disclose Paul Dubuque and Crudem Capital as sub contractors of Grigsby and Associates to ISAC in violation of their contract and the Illinois Procurement Code.
56. Neither Paul Dubuque nor Crudem Capital were registered in the State of Illinois as securities dealers and/or salespersons.
57. Grigsby and Associates and Calvin Grigsby failed to perform any review prior to contracting of work and the payment of fees to determine if Paul Dubuque and/or Crudem Capital were registered in the State of Illinois.

Failure to Comply with Requirements Regarding Gifts to Third parties

Notice of Hearing

-11-

58. During the years of 2008 and 2009, Grigsby and Associates through Boutte provided sporting tickets to individual clients that were valued in excess of \$100 per individual per year.
59. These tickets included tickets to Chicago Bulls games and tickets to a corporate suite at White Sox games which were provided to Andy Davis, the Executive Director of ISAC, and an ISAC commissioner at the time.
60. These sporting tickets were gifts and therefore must comply with Municipal Securities Rulemaking Board (MSRB) and FINRA requirements regarding gifts to third parties.
61. Grigsby and Associates and Calvin Grigsby failed to maintain any records of the type, amount and recipient of any gifts provided by Boutte or any other employee, independent contractor or Registered Representative of Grigsby and Associates.

Violations and Sanctions

62. That by virtue of the foregoing, Grigsby and Associates and Calvin Grigsby have violated sections 12.A, D, F, G, H, I and J of the Act.
63. Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsection D, F, G, H, I or J of Section 12 of the Act, the Secretary of State may by written order prohibit the person from offering or selling any securities or providing investment advice in this State.
64. Section 11.E(4) of the Act provides, inter alia, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act.
65. That by virtue of the foregoing, Grigsby and Associates and Calvin Grigsby are subject to a fine of up to \$10,000.00 per violation, an order of censure an order which permanently prohibits the Respondents from offering or selling

Notice of Hearing

-12-

securities or providing investment advice in the State of Illinois and an order that suspends or revokes their dealer and salesperson registrations, respectively, in the State of Illinois.


66. That by virtue of the foregoing the Respondents' registrations are subject to a suspension or revocation pursuant to Section 8.E.1(b), (e), (g), (m) and/or (q) of the Act.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above or a Special Appearance pursuant to Section 130.1107 of the Rules, or other responsive pleading within thirty days of the receipt of this notice. Your failure to do so within the prescribed time shall be deemed an admission of the allegations contained in the Notice of Hearing and waives your right to a hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default.

Delivery of notice to the designated representative of any Respondent constitutes service upon such Respondents.

Dated this 16th day of July, 2012


Jesse White
Secretary of State
State of Illinois

Attorney for the Secretary of State:
David Finnigan
Illinois Securities Department
300 W. Jefferson St. Suite 300A
Springfield, Illinois 62702
Telephone: (217) 785-4947

Notice of Hearing
-13-

Hearing Officer:
Jon K. Ellis
1035 S. 2nd St.
Springfield, Illinois 62704
217-528-6835
Fax 217-528-6837